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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Hakan Djuphammar, et al.

Serial No.: 9/474056

Filed: December 28, 1999

**For: Combined CDMA Multi-Service Carrier and
TDMA/CDMA Packet Carrier**

Attorney's Docket No: 4740-053

Examiner: Mr. Toan D. Nguyen

Group Art Unit: 2665

Raleigh, North Carolina
September 20, 2004

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LETTER ACCOMPANYING APPEAL BRIEF

Attached hereto please find triplicate copies of the Appeal Brief due in the above pending appeal.
Please note that this document and the Appeal Brief also were faxed to the Patent Office today. Any fees
due for entry of the accompanying Appeal Brief may be charged to Deposit Account 18-1167.

Respectfully submitted,

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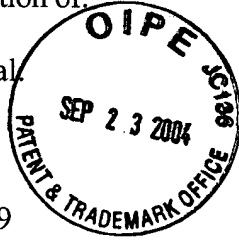
Michael D. Murphy

DATE MAILED

20 Sep 2004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re U.S. Patent Application of:)
Hakan Djuphammar, et al)
Serial No. 09/474,056)
Filed: December 28, 1999)
For: **Combined CDMA Multi-Service**)
Carrier and TDMA/CDMA Packet Carrier)



Group Art: 2665
Confirmation: 1813
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Attorney Docket No. 4740-053

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Sir:

This appeal brief is filed in triplicate pursuant to 37 C.F.R. § 1.192. The \$330 fee required by 37 C.F.R. § 1.17(b) for entry of this brief may be charged to Deposit Account 18-1167. For convenience, the below brief was also faxed to the Patent Office earlier today.

APPEAL BRIEF

(1) REAL PARTY IN INTEREST

The real party in interest is Telefonaktiebolaget L.M. Ericsson, the Assignee of the present invention.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences to the best of Applicant's knowledge.

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(3) STATUS OF CLAIMS

Claims 1-3, 5, 7-10, 12-16, and 18-24 are pending in the instant application. Claims 8-10, 12, 13, and 21-23 are allowed. Claims 1-3, 5, 7, 14-16, 18-20, and 24 are rejected as being obvious, and are the basis of this appeal.

(4) STATUS OF AMENDMENTS

All amendments have been entered.

(5) SUMMARY OF INVENTION

As defined by the claims under appeal, the present invention comprises a method and apparatus controlling the synchronization of a mobile station with a selected one in a pair of wireless communication network carriers comprising an “all-services” carrier and a “best-efforts” carrier. (See e.g., specification at page 4, line 19, and Figure 1.) One of the carriers is considered the “default” carrier for the mobile station and by default the mobile station is synchronized with that carrier. (See e.g., specification at page 5, line 7.) However, according to the invention, the mobile station is notified to synchronize with the other (remaining) carrier as needed, such as to connect the mobile station to an incoming call that involves the other carrier. After services involving the other carrier are completed, the mobile station is again synchronized with the default carrier.

In an exemplary embodiment, one carrier is a High Data Rate (HDR) packet data carrier providing non-real-time data services and the other carrier is a 1xRTT carrier providing non-real-time and real-time data and voice services. In this context, the present invention enables a given mobile station to remain in synchronization with one of the two carriers by default, and thus be at the ready on that default carrier, and yet still be “available” for receiving an incoming call on the remaining carrier. For example, the instant application illustrates several default/non-default

carrier synchronization changes, such as the process of changing synchronization from a 1xRTT carrier to a HDR carrier so that a HDR-based data call may be received while the mobile station is active on a 1xRTT voice call. (See e.g., specification at page 8, line 14, and Fig. 5; also see Figs. 6-8 and the corresponding specification text for other synchronization scenarios.)

(6) ISSUES

The issues for appeal are whether claims 1-3, 5, 7 are obvious under 35 U.S.C. § 103(a) in view of U.S. Patent No. 6,389,008 B1 to Lupien et al. (hereinafter “Lupien”) in combination with WO 99/11032 to Peltola Jukka (hereinafter “Jukka”), and whether claims 14-16, 18-20.

(7) GROUPING OF CLAIMS

The rejected claims comprise two groups: Group I including claims 1-3, 5, and 7, and Group II including claims 14-16, 18-20, and 24.

(8) ARGUMENT

I. Claims 1-3, 5, and 7 are not obvious in view of the cited references.

A. The examiner’s rejections fail because they are based on improper claim construction.

1. *The examiner misconstrues the “all-services carrier and best-efforts carrier” limitations.*

Claim 1 as pending includes the following text:

A method of wireless communication, comprising:

- (a) synchronizing, during an idle state, a mobile station to a default carrier selected from a group comprising an all-services carrier and a best-efforts carrier, the all-services carrier supporting real-time and non-real-time services, the best-efforts carrier supporting only non-real-time services;
- (b) notifying the mobile station to synchronize with a remaining carrier;
- (c) synchronizing the mobile station to the remaining carrier;
- (d) connecting an incoming call to the mobile station over the remaining carrier;
- and
- (e) synchronizing the mobile station to the default carrier upon completion of the incoming call.

Thus, Claim 1 sets forth a method wherein the mobile station is synchronized to a default one of two available carriers, and temporarily changed over to synchronization with the other (remaining) one of the two carriers, after which an incoming call on the remaining carrier is connected to the mobile station. After completion of that call, the mobile station is returned to synchronization with the default one of the two carriers.

In the examiner's Final Office Action of 20 April 2004 (the "Final Rejection"), he gives the all-services and best-efforts carrier limitations of claim 1 an overbroad interpretation by reading them onto the GSM/GPRS networks disclosed by Lupien that includes a single air interface carrier. (See e.g., Item 3 of the examiner's Detailed Action, wherein he argues that the disclosure of an "interworking function" on the core network side of a GSM and GPRS network is the same as the claimed limitations of having a best-efforts carrier and an all-services carrier.)

While the examiner is supposed to give claim limitations their broadest reasonable construction, the process of understanding the meaning of a given claim is informed by the claim language itself, by the specification, and by any relevant statements in the prosecution history. Eastman Kodak Co. v. Goodyear Tire & Rubber Co., 42 USPQ2d 1737, 1740 (Fed. Cir. 1997) (citing to Markman v. Westview Instruments, Inc., 116 S. Ct. 1384; Markman, 52 F.3d at 979).

In the instant case, the examiner ignores the multiple carrier limitations (or blurs their meaning) to support his drawing of an equivalency with Lupien's GPRS/GSM interworking function. The examiner is obligated to interpret the claims as would one skilled in the art. Multiform Desiccants, Inc. v. Medzam, Ltd., 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). No one skilled in the art would read the passages of Lupien (or any other part of Lupien) and conclude that Lupien disclosed the best-efforts carrier and all-services carrier of the instant application.

2. *The examiner misconstrues the default/remaining carrier "synchronizing" limitations.*

As with carrier limitations, the examiner misconstrues or outright ignores the limitations regarding the default and non-default carrier synchronization limitations of claim 1.

Synchronization limitations included in claim 1 specify changing synchronization from the default carrier to the other (remaining) carrier, receiving an incoming call on the remaining carrier, and then changing back to synchronization with the default carrier after completion of the incoming call.

The examiner simply recites these limitations verbatim and then states that Lupien discloses the same limitations at col. 15, lines 31-36. Remarkably, this section of Lupien discloses only that Lupien involves an ANSI-41 circuit-switched network to provide voice services and a GPRS network to provide packet data services, with an interworking function to connect the two networks. The examiner's assertion is a plain misconstruction of the claimed limitations, since the cited passage (or any other passage of Lupien) does not disclose an all-services carrier providing voice and low-rate (packet) data services, and a best-efforts carrier providing only non-real-time, high-rate packet data services. That is, the examiner gives the claim limitations an unreasonably broad construction by arguing that they are equivalent to the ANSI-41/GPRS interworking function disclosed by Lupien.

B. The examiner's rejections fail the prima facie case of obviousness because they do not teach or suggest the claimed invention.

1. *The basis of the examiner's obviousness rejection is that erroneous assertion that Lupien teaches a best-efforts carrier, an all-services carrier, and a method of synchronizing between them.*

Lupien is best understood as a solution that ties in ANSI-41 type network functions with GPRS type network functions, so that ANSI-41/136 base stations can carry traffic over the ANSI-41/136 air interfaces for both circuit-switched services offered by the ANSI-41 network

functions and packet data services offered by the GPRS network functions. (See e.g., Lupien at col. 4, lines 13-18; col. 4, lines 56-63; col. 5, lines 1-4; col. 7, lines 26-33; etc.)

Lupien therefore is not addressed to managing mobile station synchronization between different types of radio carriers. Indeed, in its entirety Lupien mentions “carriers” only once and does so explicitly in the context of explaining that it supports radio coverage via ANSI-136 type radio carriers in Mobile Switching Center (MSC) service areas. (See, e.g., Lupien at col. 5, lines 1-4.)

Since Lupien does not teach or suggest best-efforts and all-services carriers, it cannot teach or suggest synchronizing to one or other of such carriers. Indeed, in its entirety Lupien uses the word “synchronization” (or any derivative or synonym thereof) only one time, and only in the context of synchronizing network functions. (See, e.g., Lupien at col. 10, lines 39-54.) Even there, the “synchronization” disclosed by Lupien is a network authentication synchronization function—it flatly has nothing to do with synchronizing a mobile station to one or another air interface carrier.

The simple upshot is that the examiner has offer Lupien as a primary reference in his obviousness rejection of claim 1 based on the assertion that it teaches a best-efforts carrier—it does not—that it teaches an all-services carrier—it does not—and that it teaches synchronizing first to one of them, and then to the other one—it does not. Without even exploring what the addition of teachings from the secondary reference (Jukka) might add to Lupien, the examiner’s obvious rejection of claim 1 and its dependents fails as a matter of law because Lupien does not teach what the examiner asserts it does, even under the “broadest” possible interpretation of all applicant’s claim limitations.

2. *The combination of Jukka with Lupien does nothing to bolster the examiner’s obviousness rejections.*

As stated above, the examiner flatly states (and wrongly so) that Lupien teaches (1) a best-efforts carrier and an all-services carrier and (2) teaches synchronizing a mobile station to a first one of them, and then to the remaining one of them to complete an incoming call, for example. (See the Final Rejection at pages 2-3.) However, the examiner further states that Lupien does not teach synchronizing to a default carrier.

To find that teaching, the examiner looks to Jukka, which he alleges as teaching synchronization to a default carrier in an analogous art, such that its combination with Lupien is properly made. Frankly, the examiner's attempted combination of Jukka with Lupien seems to arise from no other reason other than the word "synchronization" appears in Jukka.

Literally, the examiner cites to page 3, lines 2-3, and page 10, lines 16-18, of Jukka for the proposition that it teaches synchronizing to a default carrier, which necessarily implies that, in the context of Jukka, there must have been some non-default carrier that might otherwise have been used as the basis for synchronization. Jukka teaches no such choice of synchronizing between default and non-default carriers, and its teachings are flatly inapposite with respect to Lupien.

Jukka teaches the use of unused circuit-switched transmission capacity for transmitting packet data. At the page 3, lines 2-3 citation reference by the examiner, Jukka simply states that *"[t]he invention allows, as will be described below, clearly higher transmission rates to be obtained than by using the LAPD channel. The transmission connection is reliable because synchronization has already been confirmed before transmission starts."* What this has to do with picking a carrier from a choice of two carriers, and designating that carrier a default carrier for initial synchronization is unexplained by the examiner.

In fact, the examiner makes no effort to explain the relevance of the cited portion of Jukka. Remarkably, the unavoidable conclusion is that the examiner simply found in Jukka a

document related to wireless communication networks that mentioned the word “synchronization.” (Note that the cite to page 10 of Jukka is equally inapposite with respect to the present invention.) For the record, the cited portions of Jukka relate to the use of circuit-switched connections between a (Radio) Base Station and a Base Station Controller to carry packet data, rather than using a LAPD (Link Access Protocol for Digital channel) connection between them. In short, the cited portions of Jukka, nor any other portions of Jukka, have anything to do with synchronizing to a default (radio) carrier.

3. The combination of Jukka with Lupien is legally flawed and the examiner’s obviousness rejection of claim 1 and its dependents must be withdrawn.

In setting forth a factual basis for motivation, the Patent Office must go beyond mere broad conclusionary statements and set forth specific understandings or technical principles that would motivate a person of ordinary skill in the art to make the combination that would render the combination obvious. In re Dembizak, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). The first requirement of an obviousness rejection is that argued-for combination of references must teach or suggest every limitation of the claimed invention, and there must have been some motivation for one skilled in the art to make the argued-for combination of references. The examiner’s rejection fails on these points as a matter of law.

Specifically, Lupien does not teach the use of multiple types of carriers, much less teach synchronizing to one or the other in a pair of carriers comprising a best-efforts carrier and an all-services carrier. Jukka does not teach the use of different types of carriers, and much less teach synchronizing to a default carrier.

The examiner has never explained why one would combine Jukka with Lupien—the combination is not possible—nor has he explained the motivation for making such a combination, other than stating (verbatim) that “it would have been obvious to one ordinary skill in the art to at the time of the invention, to use the synchronizing the mobile station to the default

carrier as taught by Peltola Jukka in Lupien et al.'s system with the motivation being to provide faster operation (page 10, lines 16-22).” It is critical to keep in mind that Jukka deals with the circuit-switched interfaces between the base station and the base station controller in a radio access network, not a default carrier, and that Lupien deals with interworking GPRS and ANSI-41/136 network functions, and that one has nothing to do with the other. Jukka could not be combined with Lupien and, even if it was, the result is unknown and certainly not what the examiner alleges.

Thus, positioning Jukka as analogous art and therefore eligible for combining with Lupien is legally erroneous. Determining whether a reference is analogous or non-analogous is a two-step process comprising determining (1) whether the reference is within the field of the inventor's endeavor; and (2) if not, whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Deminski, 230 USPQ 313 (Fed. Cir. 1986).

Jukka cannot be argued as analogous because it is not within the field of the applicant's endeavor, nor is it directed (nor even relevant) to the problems being solved by the present invention as claimed. The field of endeavor of Jukka is a circuit-switched network in which extra circuit-switched capacity is put the use of carrying packet data. The field of endeavor of the instant application is a wireless communication network offering circuit and low-rate data services on one carrier, and high-rate data services on another carrier, and the attendant problems of synchronizing to one or the other carrier as needed.

Respectfully, because Lupien does not teach what the examiner alleges, and because the addition of Jukka to Lupien only compounds the examiner's factual, technical, and legal errors, the examiner's obviousness rejections of claim1 and its dependent claims fail as a matter of law. Therefore, these rejections must be withdrawn.

II. Claims 14-16, 18-20, and 24 are not obvious in view of the cited references.

A. The examiner's rejections fail because they are based on improper claim construction.

Claim 14 includes the following text:

A wireless communication network configured to allow a call to be selectively carried over either an all-services carrier or a best-efforts carrier, the all-services carrier supporting real-time and non-real-time services, the best-efforts carrier supporting only non-real-time services, the network further configured to:
synchronize, during an idle state, a mobile station to a default carrier comprising either the all-services carrier or the best-efforts carrier;
notify the mobile station to synchronize with a remaining carrier upon notice of an incoming call at a mobile station controller;
synchronize the mobile station to the remaining carrier upon receipt of an incoming call;
connect the incoming call to the mobile station over the remaining carrier;
and
synchronize the mobile station to the default carrier upon completion of the call.

As with the construction of claim 1, the examiner gives over-broad construction to the limitations of having a best-efforts carrier, an all-services carrier, and synchronizing between a default one and a remaining one of those two carriers. If the examiner's rejection of claim 14 and its dependent claims based on the combination of Lupien and Jukka is argued as well-grounded, then one has to ignore these explicit limitations, which is impermissible.

B. The examiner's rejections fail because the combination of Lupien and Jukka do not teach the present invention.

1. *The combination of Lupien and Jukka does not teach a best-efforts carrier, an all-services carrier, nor does it teach synchronizing between them.*

Lupien does not teach the use of a best-efforts carrier, an all-services carrier, and an apparatus for synchronizing the mobile station to both such carriers at different times. Jukka is erroneously argued by the examiner as being relevant in terms of teaching a default carrier to which the mobile station is synchronized.

To make this argument, the examiner simply grabs the word “synchronization” from Jukka without any regard for its contextual use. Even a cursory reading of Jukka reveals that the passages cited by the examiner are nonsensical in the context of Lupien, and irrelevant to the present invention as claimed in claim 14. For this reason alone, the rejection of claim 14 and its dependent claims must be withdrawn.

2. *The combination of Lupien and Jukka does not teach synchronizing to a default carrier.*

For the reasons given immediately above, and for the further reasons argued for claim 1, the examiner is mistaken in his arguments that Jukka teaches the use of a synchronizing to a default carrier within the meaning of applicant’s claims, and in a manner that has any relevance to Lupien. For these reasons alone, the rejection of claim 14 and its dependent claims must be withdrawn.

3. *The combination of Lupien and Jukka does not teach notifying a mobile station to change synchronization from one carrier to another responsive to an incoming call.*

Claim 14 shares with claim 1 the limitations of having a best-efforts carrier and an all-services carrier, and synchronizing the mobile station to a default one of the two carriers. Claim 14 includes the further limitation of shifting the mobile station from synchronization with the default carrier to synchronization with the remaining (non-default) carrier responsive to receiving an incoming call to the mobile station to be carried on the remaining carrier.

Thus, claim 14 teaches changing the mobile station’s synchronization from one carrier to another, to enable the delivery of an incoming call on the carrier with which the mobile station was not previously synchronized. The examiner states that col. 15, lines 33-42 of Lupien discloses notifying the mobile station to change synchronization from a default carrier to a remaining carrier responsive to receiving an incoming call for the mobile station, but the cited passage actually describes a process whereby Lupien allows a GPRS network node (SGSN 32) to

notify a MSC/VLR 23 (Mobile Switching Center/Visitor Location Register) of a mobile station registration event.

At the risk of stating the obvious, the disclosed operations of Lupien have nothing to do with the claimed limitation. For this reason alone, the rejection of claim 14 and its dependent claims must be withdrawn.

4. *The combination of Lupien and Jukka is improperly made.*

As noted in the arguments given for claim 1, Jukka discloses using extra circuit-switched connection capacity between a base station and a base station controller for carrying packet data. This teaching is inapposite to Lupien, and the argued for combination of Lupien with Jukka is specious. Even were such a combination practicable and desirable, the combination would not teach or suggest the limitations of claim 14. For these reasons alone, the rejection of claim 14 and its dependent claims must be withdrawn.

(9) CONCLUSION

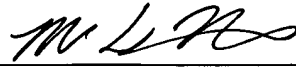
All of the examiner's rejections rely on misstatements of Lupien's teachings, which are plainly wrong on their face. The rejections amount to no more than the verbatim copying of applicant's claim limitations and sweeping, conclusory language by the examiner, with no attempt at considered analysis. That lack of analysis is all the more apparent from his plain misreading of Jukka, which, under the most generous of readings, cannot be argued to show what the examiner claims it does, nor cannot be argued as combining in any meaningful way with Lupien.

Respectfully, then, applicant submits that the examiner's rejections of the above claims plainly fail as a matter of law. Therefore, applicant requests that all outstanding rejections be withdrawn.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

By:



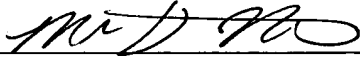
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(10) APPENDIX

CLAIMS ON APPEAL

1. (Previously Amended) A method of wireless communication, comprising:
 - (a) synchronizing, during an idle state, a mobile station to a default carrier selected from a group comprising an all-services carrier and a best-efforts carrier, the all-services carrier supporting real-time and non-real-time services, the best-efforts carrier supporting only non-real-time services;
 - (b) notifying the mobile station to synchronize with a remaining carrier;
 - (c) synchronizing the mobile station to the remaining carrier;
 - (d) connecting an incoming call to the mobile station over the remaining carrier; and
 - (e) synchronizing the mobile station to the default carrier upon completion of the incoming call.
2. (Original) The method of claim 1, wherein the default carrier is a 1xRTT carrier, the remaining carrier is a HDR carrier, and the call is a data call.
3. (Original) The method of claim 1, wherein the default carrier is a HDR carrier, the remaining carrier is a 1xRTT carrier, and the call is a voice call.
4. (Cancelled)
5. (Previously Amended) The method of claim 1, wherein prior to notifying the mobile station to synchronize with the remaining carrier, the mobile station has an active voice call in

progress over the default carrier, the active voice call being placed on hold during steps (c), (d) and (e), and further wherein the default carrier is a 1xRTT carrier.

6. (Cancelled)

7. (Previously Amended) The method of claim 1, wherein notifying the mobile station to synchronize with the remaining carrier includes notifying the mobile station to synchronize with a HDR carrier because of the incoming call, said incoming call being a data call, and further comprising:

placing an active voice call over the default carrier on hold;
accepting the data call over the HDR carrier; and
reconnecting the active voice call.

8. (Previously Amended) A wireless communication network configured to allow a call to be selectively carried over either an all-services carrier or a best-efforts carrier, the all-services carrier supporting real-time and non-real-time services, the best-efforts carrier supporting only non-real-time services, said wireless communication network further being configured to:

connect a data call to a mobile station over the best-efforts carrier;
if a specified condition is detected while the data call is in progress,
synchronize the mobile station to the all-services carrier; and
continue the data call over the all-services carrier.

9. (Original) The communication network of claim 8, wherein the all-services carrier is a 1xRTT carrier, and the best-efforts carrier is a HDR carrier.

10. (Original) The communication network of claim 8, wherein the best-efforts carrier is a packet data carrier.

11. (Cancelled)

12. (Previously Amended) The communication network of claim 8, wherein the specified condition is detected by examining transmitted packet data.

13. (Previously Amended) The communication network of claim 8, wherein the specified condition is detected by an Application Programming Interface within the mobile station.

14. (Previously Amended) A wireless communication network configured to allow a call to be selectively carried over either an all-services carrier or a best-efforts carrier, the all-services carrier supporting real-time and non-real-time services, the best-efforts carrier supporting only non-real-time services, the network further configured to:

synchronize, during an idle state, a mobile station to a default carrier comprising either the all-services carrier or the best-efforts carrier;

notify the mobile station to synchronize with a remaining carrier upon notice of an incoming call at a mobile station controller;

synchronize the mobile station to the remaining carrier upon receipt of the incoming call;

connect the incoming call to the mobile station over the remaining carrier;

and

synchronize the mobile station to the default carrier upon completion of the call.

15. (Original) The communication network of claim 14, wherein the default carrier is a 1xRTT carrier, the remaining carrier is a HDR carrier, and the call is a data call.

16. (Original) The communication network of claim 14, wherein the default carrier is a HDR carrier, the remaining carrier is a 1xRTT carrier, and the call is a voice call.

17. (Cancelled)

18. (Previously Amended) The communication network of claim 14, wherein prior to notifying the mobile station to synchronize with the remaining carrier, the mobile station has an active voice call in progress over the default carrier, and the network is configured to place the active voice call on hold while the mobile station is synchronized to the remaining carrier.

19. (Previously Amended) The communication network of claim 14, wherein the network is further configured to:

transfer the incoming voice call to the remaining carrier; wherein the incoming call is a voice call; and

accept the voice call over the remaining carrier.

20. (Previously Amended) The communication network of claim 14, wherein the network is further configured to:

place an active voice call over default carrier on hold;

accept the incoming call over the remaining carrier, wherein the incoming call is a data call; and

reconnecting the active voice call.

21. (Previously Amended) A method of wireless communication, comprising:

providing a hybrid network, the hybrid network enabling a call to be selectively carried over either a 1xRTT carrier or an HDR carrier;

connecting a data call over the HDR carrier;

determining that the data call should be carried over the 1xRTT carrier;

synchronizing the mobile station to the 1xRTT carrier; and

continuing the data call over the 1xRTT carrier.

22. (Original) The method of claim 21, wherein the determining step comprises examining transmitted packet data.

23. (Original) The method of claim 21, wherein the determining step is performed by an Application Programming Interface within the mobile station.

24. (Previously Added) The communication network of claim 18, wherein the default carrier is a 1xRTT carrier, the remaining carrier is a HDR carrier, and the call is a data call.